

Remarks

Reconsideration and further examination is respectfully requested in light of the foregoing amendment, and in consideration of these remarks.

Claims 4 and 6-10 are pending in this application. Claims 1-3 and 5 previously have been cancelled.

The Examining Attorney rejected Claims 4, 6, and 8-10 on the basis of Ohara et al (U.S. Patent 5,069,141) under 35 U.S.C. 102(b). Claim 7 was rejected on the basis of Section 103 over Ohara in view of information the Examining Attorney refers to as “well known in the art”.

All rejections are traversed in this paper. Accordingly, Claims 4, and 6 through 10 are pending in this application.

Location of Support for Amendments:

Applicant appeals to the following locations for support for the amendments made in this paper. Other locations in the Specification may be more or less relevant. Applicant requests the Examiner to consider these locations, and any others that may be relevant. For all amendments, the Applicant directs the Examining Attorney’s attention first to paragraph [0023]. Additional locations for consideration may include paragraphs [0035], [0037], and [0040].

Response to Rejections: Section 102(b) Issues:

Basis: The Examiner rejected Claims 4, 6, and 8-10 on the basis of Ohara, citing to the presence of a load bearing section as labeled 43 (which Applicant notes is characterized by a *pendant* gripping mechanism labeled 42).

Argument:

CLAIM 4: The Applicant has amended Claim 4 to refer to the load bearing section as being “rigidly affixed to a wheel section”. Ohara, as noted by the Examining Attorney in connection with Claim 7, discloses a device in which “the load-bearing member is suspended” from above. More particularly, as understood by Applicant, Ohara appears to “hang” the load from an overhead conveyor in such a manner that the load self levels much like a plumb bob finds plumb. See, for example, the treatment of reference numeral 42 in Figure 7, particularly when read in light of the cable-suspension description at Column 3, lines 27-43. Based on these teachings, Applicant contends that Ohara provides a connection between the drive wheel section and the load that is not rigid, but rather that is dynamically movable among infinite relative positions. The connection allows both vertical movement between the load and the drive wheel section (see Column 3, lines 27-43) and angular movement (such as would occur because of the inherent lack of rigidity of the cable connection (see Column 3, lines 41-42; See Fig. 7).

Further to the amendment set forth in this paper, Claim 4 now specifies that the load section of the claimed invention is “rigidly affixed” to the wheel section, a configuration not taught in Ohara. Applicant respectfully requests that the rejection of Claim 4 over Ohara be withdrawn because Ohara omits an element or limitation of the claim.

CLAIM 6 (and dependent Claims 7-9): The Applicant has amended Claim 6 to now refer to the load bearing section as being “maintained in rigid relationship to the upper wheel and the lower wheel.” Ohara’s disclosure presents a load bearing section that pivots or swings toward plumb, and thus moves relative to the wheeled section as those wheels travel up an incline. Therefore Ohara’s teaching does not appear to include

a rigid relationship like that described. Ohara therefore fails to teach a feature of Applicant's claim 6 as amended. Applicant respectfully requests that the rejection over Ohara be withdrawn with respect to independent Claim 6 as well as the dependent claims 7 through 9.

CLAIM 10: Applicant has amended Claim 10 to state that the load bearing section is maintained in a "fixed position relative to" the line between the axes of the upper and lower wheels. Given that Ohara shows a pendant load-bearing system, Ohara does not teach such a fixed position relative to the line between the axes. Applicant respectfully requests that the rejection over Ohara be withdrawn for failure of Ohara to teach the "fixed position" aspect of Claim 10.

Applicant accordingly respectfully contends that a 102(b) rejection over Ohara is not appropriate for any of the independent claims 4, 6 or 10. Likewise, to the extent the independent claims overcome Ohara, so must the dependent claims 7, 8, and 9.

Response to Rejection: Section 103 Issues re Claim 7:

With respect to Claim 7, the claim depends from Claim 6. As dependent from an allowable claim, Claim 7 is also believed to be allowable. Moreover, if the Examining Attorney would maintain a rejection on the basis of such "well known" information, the Applicant is entitled under 37 C.F.R. 1.104(d)(2) to know the source of authority for such information, and under such provision calls for an affidavit of the Examiner in connection with such a rejection (if the rejection is to be maintained).

Additionally, the suggestion by the Examiner that Ohara could be inverted (to render the support above the rail) is impermissible because such an inversion would

destroy the function of the device. A reference may not serve as a basis for a § 103 rejection for obviousness where the modification or combination made to the reference destroys the intended function of the invention found in that reference. See, e.g., *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). Given that Ohara connects the load to the drive wheels via a flexible, retractable cable system, attempting to place the load over the rail would not work, as the cable would not support the load in position. Attempting to do so would likely either (or both) dump the load, or drag the load against the rail (there being no rigid affixing of the platform relative to the wheels).

The arguments set forth herein are not exclusive or exhaustive, and Applicant reserves the right to assert other distinctions, but does not deem such argument necessary in light of the force of the distinctions discussed above.

Applicant respectfully seeks withdrawal of the rejection.

Fees

No extension of time is believed to be necessary in connection with this paper, but if any extension is required in order for this paper to be considered, such an extension is hereby requested. This response therefore is timely. An authorization to charge deposit account 50-0954 is also enclosed to cover any deficiency. To the extent any petition is required in order for this response to be considered timely, or otherwise to maintain the pendency of this Application, this paper is deemed to include and to be such a petition.

Conclusion

Applicant respectfully submits that in light of the foregoing, all rejections to the application should be withdrawn. Applicant has diligently sought to comply with all requirements and to respond to any arguments. The Application is believed to be in condition for allowance, and early approval is respectfully requested.

Respectfully submitted,

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AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT 50-0954

If, after processing the enclosed correspondence, any charges, fees, or sums due remain unpaid in connection with this correspondence, I hereby authorize the Commissioner of Patents and Trademarks to charge all such remaining fees, charges, and other sums due to Deposit Account Number **50-0954**.

Date: February 27, 2007

Nathan W. Johnson
Authorized User